IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5872 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI NAGINDAS KHATRI

Versus

STATE OF GUJARAT

Appearance:

MR PT JASANI for Petitioner

MR UR BHATT, Ld. GOVERNMENT PLEADER for Respondent No. 1.

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 10/04/2000 (Annexure - A) passed by respondent no.2 in respect to detenu - petitioner in

exercise of his powers conferred upon him under section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is a "bootlegger" within the meaning of section 2(b) of the Act and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. To arrive at a subjective satisfaction before passing an order of detention, the respondent no.2 detaining authority has placed reliance on three cases registered under the Bombay Prohibition Act, 1949 which are referred to in the ground of detention. The detaining authority i.e. the authority who passed an order of detention also placed reliance on statements of two witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. As per the case of the detaining authority, the statements of witnesses were recorded on 6th April, 2000 and 7th April, 2000 respectively and both the statements were verified by the detaining authority on 9th April, 2000 and on the very next day i.e. on 10/04/2000 the respondent no.2 passed an order of detention against the detenu which is challenged in this writ petition.

4. Though rule has been served upon each respondents, the respondents have not filed affidavit-in-replies in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.P. T. Jasani, learned advocate for the petitioner has argued that the detaining authority has claimed privilege under section 9(2) of the Act for statements of two witnesses which were verified by the detaining authority on 9th April, 2000 and on 10th April, 2000, the respondent no.2 passed an order of detention. Thus, it is clear that for doing exercise to verity the statements properly detaining Authority had no time. Mr.P. T. Jasani, learned advocate for the petitioner has cited an authority of KALIDAS CHANDUBHAI KAHAR V/S. STATE OF GUJARAT & OTHERS, reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of the Act. It has further been held that at the time of exercising the privilege under section 9(2) of the Act balance is

required to be struck between the public interest and the right of the detenu to make a representation under Article 22(5) of the Constitution of India. On the other hand, if the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision of section 9(2) in the Act on the basis of Article 22(5) of the Constitution of India which provides that nothing in sub-sec.(1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Here in this case, the respondents have not filed affidavit-in-replies. Here in this case, safeguard guaranteed under Article 22(5) of the Constitution of India is violated and, therefore, the order of detention which is challenged in this writ petition is bad in law and it requires to be set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 10th April, 2000 passed by respondent no.2 in respect to detenu is quashed and set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)

(vijay)